UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN COLD-ROLLED STEEL PRODUCTS FROM
CHINA, INDONESIA, SLOVAKIA, AND TAIWAN
Investigations Nos. 731-TA-831-832, 835, 837 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3320, July 2000)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China, Indonesia, Slovakia, and Taiwan of certain cold-rolled steel products that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective June 2, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corporation (Bethlehem, PA); U.S. Steel Group (Pittsburgh, PA); Ispat Inland, Inc. (East Chicago, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN); Gulf States Steel, Inc. (Gadsden, AL); Steel Dynamics, Inc. (Butler, IN); Weirton Steel Corporation (Weirton, WV); and the United States Steelworkers of America, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain cold-rolled steel products from China, Indonesia, Slovakia, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 1, 1999 (64 FR 67307). The hearing was held in Washington, DC, on January 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Lynn M. Bragg dissenting.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel products from China, Indonesia, Slovakia, and Taiwan that the Department of Commerce ("Commerce") found to be sold in the United States at less than fair value ("LTFV").[1]

I. THE COMMISSION ADOPTS THE VIEWS STATED IN *CERTAIN COLD-ROLLED STEEL PRODUCTS FROM ARGENTINA, BRAZIL, JAPAN, RUSSIA, SOUTH AFRICA, AND THAILAND* AND *CERTAIN COLD-ROLLED STEEL PRODUCTS FROM TURKEY AND VENEZUELA*

On June 2, 1999, the domestic industry filed petitions seeking the imposition of antidumping and countervailing duties on imports of certain cold-rolled steel products from 12 countries: Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela. On March 20, 2000, the Commission published its determinations with respect to six of those countries: Argentina, Brazil, Japan, Russia, South Africa, and Thailand.[2] On May 17, 2000, the Commission published its determinations with respect to two additional countries, Turkey and Venezuela.[3] The Commission was required to issue its determinations with respect to those countries in March 2000 and May 2000 because Commerce issued its final determinations with respect to those countries earlier than its determinations with respect to China, Indonesia, Slovakia, and Taiwan.

The record in these investigations is nearly identical to the record on which the determinations regarding imports from Argentina, Brazil, Japan, Russia, South Africa, Thailand, Turkey, and Venezuela were based.[4] Therefore, for purposes of these determinations, we adopt the findings and analysis in the Commission's views regarding imports from Argentina, Brazil, Japan, Russia, South Africa, Thailand, Turkey, and Venezuela for like product, domestic industry, negligibility, and conditions of competition, including captive consumption.[5]

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[1] Commissioner Bragg dissenting. See Dissenting Views of Commissioner Lynn M. Bragg.

[2] 65 Fed. Reg. 15008 (Mar. 20, 2000). See Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (Mar. 2000) (hereinafter "Cold-Rolled I").

[3] 65 Fed. Reg. 31348 (May 17, 2000). See Certain Cold-Rolled Steel Products from Turkey and Venezuela, Invs. Nos. 731-TA-839-840 (Final), USITC Pub. 3297 (May 2000) (hereinafter "Cold-Rolled II").

[4] Under section 771(7)(G)(iii) of the Tariff Act of 1930, as amended ("the Act"), the record in the instant investigations closed on the same date as that of the determinations regarding imports from Argentina, Brazil, Japan, Russia, South Africa, Thailand, Turkey, and Venezuela, except that the record in these investigations also includes Commerce's final determinations in these investigations and the parties' final comments concerning the significance of those determinations.

[5] We note that the negative determination and subsequent termination of the investigations regarding Argentina, Brazil, Japan, Russia, South Africa, Thailand, Turkey, and Venezuela render moot the consideration of some domestic producers as related parties. See Cold-Rolled I at 7-9. In light of our decision in those investigations and in these determinations not to exclude any domestic producers as related parties, we find no need to revisit the issue of related parties in these determinations. Similarly, our observations regarding the likely effects of a trade agreement

II. CUMULATION

A. In General

Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the United States market.[6] In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[7]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[8] Only a "reasonable overlap" of competition is required.[9]

Because the petitions in these investigations were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, three of the four statutory exceptions to the general cumulation rule do not apply in the final phase of these investigations.[10] One of the four statutory exceptions to cumulation, 19 U.S.C. § 1677(7)(G)(ii)(II), provides that the Commission "shall not cumulatively assess the volume and effect of imports...from any country with respect to which the

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with Russia are not relevant to these determinations but would not have affected our overall analysis.

[6] 19 U.S.C. § 1677(7)(G)(i).

[7] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[8] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[9] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[10] These exceptions concern imports from Israel, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

investigation has been terminated." The Act further provides that, if either Commerce or the Commission reaches a final negative determination in an antidumping or countervailing duty investigation, "the investigation shall be terminated upon publication of notice of that negative determination..."[11] The Commission's notice of its final negative determinations in the countervailing and antidumping duty investigations of imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand were published in the *Federal Register* on March 20, 2000.[12] The Commission's notice of its final negative determinations in the antidumping duty investigations of imports from Turkey and Venezuela were published in the *Federal Register* on May 17, 2000.[13] Accordingly, we find that those investigations have been terminated and that section 1677(7)(G)(ii)(II) precludes cumulation of imports from those countries in these instant investigations.[14]

Therefore, with the exception of imports from the countries whose investigations have been terminated, we are required to determine whether there is a reasonable overlap of competition both between the domestic like product and subject imports from each of the subject countries, as well as among the subject imports from all four of the subject countries.

B. Analysis

In Cold-Rolled I, the Commission cumulated subject imports from all 12 subject countries, finding a sufficient degree of fungibility of the subject imports with each other and the domestic merchandise, overlap of geographic markets, common or similar channels of distribution, and simultaneous presence in

[11] 19 U.S.C. §§ 1671d(c)(2) and 1673d(c)(2).

[12] 65 Fed. Reg. 15008 (Mar. 20, 2000).

[13] 65 Fed. Reg. 31348 (May 17, 2000).

[14] We have considered the record closing provision applicable to staggered investigations and find that it does not alter the operation of the statutory bar to cumulation for terminated investigations for two reasons. First, Congress's express purpose in adopting the record closing provision was to avoid the kind of analysis the Commission previously performed under the "recent order rule," which was a test for determining whether imports as to which the Commission had reached an affirmative determination in the earlier of staggered votes were having continuing adverse effects as of vote day in the later investigation, despite the imposition of an order between the votes. The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA") at 848-849. The "recent order" situation does not arise when the first of the staggered votes is negative rather than affirmative. Second, the statutory exception to cumulation for terminated investigations necessarily contemplates that the Commission will take into account determinations it makes after the date specified for closing the record to new factual information since the determinations that result in the termination of an investigation (whether based on negligibility or a negative final determination) ordinarily are made after that closing date. Indeed, the Commission's rules define the entire record in an investigation to include the determination. 19 CFR § 207.2(f)(2). This approach is consistent with Commission practice. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3106 (Feb. 1997) at 20-21. In any event, as shown by our earlier decision, we would have made the same determinations had we cumulated subject imports from all 12 countries initially named in the petitions.

the U.S. market.[15] For purposes of these determinations, we again find that each of the criteria for cumulation is met with respect to all four subject countries.[16]

1. Fungibility

According to domestic producers, domestically produced cold-rolled steel and imported cold-rolled steel are broadly interchangeable.[17] Importers also reported that domestically produced and imported cold-rolled steel products are broadly interchangeable, with certain limitations.[18] *** noted a lack of interchangeability between the domestic product and subject imports from Indonesia because of the superior quality of the domestic product.[19] Arguments were also presented by respondents that subject imports did not compete with each other, particularly with respect to Slovakia, and particularly with respect to quality differences.[20]

Purchasers of cold-rolled steel products were asked whether they had actually substituted product from one country for those from another country for the same end use. Seventeen of 40 had substituted product from two or more different countries. The results show a mix of substituted product and a mix of applications, including automotive.[21]

2. Geographic Overlap

Domestically-produced cold-rolled steel is shipped nationwide.[22] Subject imports from each of the four subject countries entered every region between January 1996 and September 1999.[23] The Great Lakes region was the most common destination for subject imports from Slovakia and Taiwan, with approximately half of subject imports from those two countries entering that region.[24] Close to one-half of all subject imports from China entered the U.S. in the East region, while over 70 percent of subject imports from Indonesia entered the Gulf or West region.[25] Relatively small shares of subject imports from Slovakia entered the West region; relatively small shares of subject imports from China entered the Great Lakes region.[26]

3. Channels of Distribution

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[15] Cold-Rolled I at 11-14.

[16] Respondents from Indonesia and Slovakia argued that the Commission is barred from cumulating the subject imports of countries whose imports are deemed to be individually negligible. We addressed those arguments in our views in Cold-Rolled I and incorporate those views by reference herein. See Cold-Rolled I at 11 n.65.

[17] CR of February 18, 2000 (hereinafter "CR") at II-8, PR of February 18, 2000 (hereinafter "PR") at II-5.

[18] CR at II-9, PR at II-5.

[19] CR at II-10, PR at II-6.

[20] Indonesian Prehearing Brief at 11-12, Slovakian Prehearing Brief at 12.

[21] CR at II-18-II-19, PR at II-12.

[22] CR at IV-9, PR at IV-8.

[23] CR at Table IV-5, PR at Table IV-5.

[24] CR at Table IV-5, Pr at Table IV-5.

[25] CR at Table IV-5, Pr at Table IV-5.

[26] CR at Table IV-5, PR at Table IV-5.

The domestic industry internally consumes a large volume of its production of certain cold-rolled steel in the process of producing downstream products such as tin mill black plate and coated products.[27] Of the domestic product sold in the merchant market in 1998, a significant portion was sold to distributors, processors, and service centers.[28] Of the sales to end users, customers in the automotive and appliance sectors were leading purchasers.[29]

U.S. importers sell the subject merchandise on the open market, primarily to distributors, processors, and service centers. In 1998, the share of subject imports shipped to that segment topped *** percent for subject imports from each of the four subject countries.[30] While the automotive sector is an important market for domestically-produced cold-rolled steel products, only subject imports from *** were sold to the automotive sector, and even for subject imports from *** the automotive sector accounted for *** percent of all subject imports.[31]

4. Simultaneous Presence

Cold-rolled steel products produced in the United States were present in the market throughout the period under investigation.[32] Subject imports from China, Slovakia, and Taiwan were present in the market in at least three-quarters of the 45 months, and subject imports from China and Taiwan were present in at least 44 of the 45 months.[33] Subject imports from Indonesia were present in each year, including eight months of 1998 and four of the first nine months in 1999.[34]

5. Conclusion

Based on the evidence in the record of the general fungibility among the subject imports and the domestic like product, broad geographic distribution, similar channels of distribution, and the simultaneous presence of subject imports in the U.S. market, we find a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. There are some quality differences perceived by both purchasers and importers between certain subject imports and the domestic product. Subject imports and the domestic like product differ notably in the channels of distribution through which the respective products flow, with virtually *** subject imports being sold on the open market to distributors and processors, compared to *** of the domestic like product. While subject imports from every country entered every region during the period under investigation, the pattern of regional distribution was different for subject imports from each country. Subject imports from Indonesia were not present in the U.S. market to the same high degree as subject imports from the other three countries. However, cumulation is appropriate when there is a reasonable overlap of competition and cumulation is not dependent on a perfect match on all factors. Therefore, we find a reasonable overlap of competition

[27] CR at Table I-2, PR at Table I-2.
[28] CR at Table I-2, PR at Table I-2.
[29] CR at Table I-2, PR at Table I-2.
[30] CR at Table I-2, PR at Table I-2.
[31] CR at Table I-2, PR at Table I-2.
[32] CR at IV-10, PR at IV-8.
[33] CR at Table IV-6, PR at Table IV-6.
[34] CR at Table IV-6, PR at Table IV-6.

among subject imports and with the domestic like product in the U.S. market. Consequently, we cumulate subject imports from all four of the subject countries for the purpose of analyzing whether the domestic industry is materially injured by reason of the subject imports.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[35] In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[36] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[37] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[38] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[39]

For the reasons discussed below, we determine that the domestic industry producing certain cold-rolled steel is not materially injured by reason of LTFV imports from China, Indonesia, Slovakia, and Taiwan.

A. Volume of Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[40]

We found the volume of subject imports not to be significant in our earlier determination, when the cumulated volume of subject imports from 12 countries was substantially larger than the cumulated volume of subject imports from the four remaining subject countries in the instant cases.[41] Here we find

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[35] 19 U.S.C. §§ 1671d(b) and 1673d(b).

[36] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[37] 19 U.S.C. § 1677(7)(A).

[38] 19 U.S.C. § 1677(7)(C)(iii).

[39] 19 U.S.C. § 1677(7)(C)(iii).

[40] 19 U.S.C. § 1677(7)(C)(i).

[41] Cold-Rolled I at 20-21. In the instant cases, the volume of subject imports increased between 1996 and 1998, rising from 115,507 short tons in 1996 to 339,979 short tons in 1998. CR at Table IV-2, PR at Table IV-2. Most of the increase occurred between 1996 and 1997, when subject imports rose by over 170,000 short tons, an increase of 153.0 percent. CR at Table IV-2, PR at Table IV-2. Subject imports declined 26.0 percent in interim 1999 compared to interim 1998. CR at Table C-1, PR at Table C-1. As a share of total domestic consumption, including internal transfers, subject imports rose from 0.4 percent in 1996 to 1.0 percent in 1998. CR at Table C-1, PR at Table C-1. The share of total domestic consumption held by subject imports in interim 1999 was 0.7 percent, compared to 0.9 percent for interim 1998. CR at Table C-1, PR at Table C-1. The share of open market consumption accounted for by subject imports rose from 0.7 percent in 1996 to 2.0 percent in 1998. CR at Table C-2, PR at Table C-2. Their share of open market consumption slipped from 1.9 percent in interim 1998 to 1.4 percent in interim 1999. CR at Table C-2, PR at Table C-2. The actual increase in subject import volume between 1997 and 1998, approximately 47,782 short tons, was approximately 0.1 percent of total open market apparent domestic consumption.

that the lesser volume of subject imports is too small to be considered significant when viewed in light of the conditions of competition in this industry, especially in light of the attenuated competition between subject imports and the domestic like product, and in light of our discussion of price effects below.

C. Price Effects of the Cumulated Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[42]

We discussed the reasons why prices were unlikely to be suppressed or depressed to any significant degree by subject imports in our views in our earlier cold-rolled determinations.[43] We find that the same conditions described in that opinion apply here and therefore adopt by reference our reasoning as expressed in those views.[44]

In sum, while the small volume of subject imports may have contributed to some extent to the price declines in the market, we conclude that the contribution of subject imports to those price declines was not significant.

D. Impact of Cumulated Subject Imports on the Domestic Industry[45]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[46] These factors include output, sales, inventories, capacity utilization, market

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[42] 19 U.S.C. § 1677(7)(C)(ii).

[43] See Cold-Rolled I at 21-24.

[44] See Cold-Rolled I at 21-24. We note that there are some differences in the degree of underselling from that described in Cold-Rolled I. Subject imports undersold domestic product in 90.0 percent of all price/product comparisons in 1996, in 93.0 percent in 1997, in 96.1 percent in 1998, and 93.1 percent in interim 1999. CR at Tables F-1-F-6, PR at Tables F-1-F-6.

[45] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of subject imports. 19 U.S.C. § 1677(7)(C)(iii)(V). The final margins as calculated by Commerce were as follows: China, 23.72 percent; Indonesia, 43.90 percent to 83.79 percent; Slovakia, 109.21 percent to 163.89 percent; and Taiwan, 14.97 percent. CR of June 16, 2000 at I-4, PR of June 16, 2000 at I-4.

[46] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is

share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[47]

We have already concluded that the volume and price effects of the subject imports are not significant. We discussed the reasons why the volume effects and price effects of the subject imports were not were having a significant impact on the domestic industry in our views in our earlier cold-rolled determinations.[48] We find that the same conditions described in that opinion apply here and therefore adopt our reasoning as expressed in those views herein by reference.[49]

In light of our conclusion that the volume and price effects of subject imports are not material, we do not find material injury to the domestic industry by reason of the subject imports.

IV NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has the discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.[50] In deciding whether to cumulate, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.[51]

Petitioners have argued that all subject imports should be cumulated for purposes of a threat determination. Various respondents have argued against cumulation.

In these investigations, we note that the volume of subject imports from all four countries was higher in 1998 than in 1996.[52] The volume of subject imports declined overall in interim 1999 compared to interim 1998, with subject imports from three of the four countries declining while subject imports from Taiwan increased.[53] Prices, as shown by average unit values, declined for subject imports from every country between 1996 and 1998 except for Slovakia.[54] Declines occurred in AUVs for subject imports from all four countries in interim 1999 compared to interim 1998 and the declines were fairly uniform,

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facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[47] 19 U.S.C. § 1677(7)(C)(iii).

[48] See Cold-Rolled I at 24-25.

[49] See Cold-Rolled I at 24-25.

[50] 19 U.S.C. § 1677(7)(H).

[51] See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Intl'l Trade 1992); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Intl'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

[52] CR at Table IV-2, PR at Table IV-2.

[53] CR at Table IV-2, PR at Table IV-2.

[54] CR at Table IV-2, PR at Table IV-2.

ranging from 21.1 to 27.0 percent.[55] Similar pricing patterns were shown for most countries and products, with price declines throughout the period under investigation.[56]

We recognize that, at least for some of the countries, there are factors that argue against cumulation for purposes of our threat analysis. However, on balance, we find enough overlap of conditions of competition and similarities in price and volume trends to warrant exercising our discretion to cumulate all subject imports. We therefore cumulate the dumped and subsidized imports from all countries subject to these investigations in assessing the threat of material injury to the industry by subject imports.

B. Statutory Factors

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[57] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[58] In making our determination, we have considered all statutory factors that are relevant to these investigations.[59] We have also taken into account the current condition of the domestic industry.[60]

We found that the cumulated subject imports of all 12 countries, which included subject imports from the four countries currently at issue, did not threaten the domestic industry with material injury in our prior determinations.[61] Our consideration of all statutory factors relevant to these investigations reveals that the same factual underpinning for our finding of no threat of material injury in our earlier determinations is present, or is even more compelling, in these investigations.[62] Therefore, for the reasons

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[55] CR at Table IV-2, PR at Table IV-2.

[56] CR at Tables F-1 to F-6, PR at Tables F-1 to F-6.

[57] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[58] 19 U.S.C. § 1677(7)(F)(ii).

[59] 19 U.S.C. § 1677(7)(F)(I). Factor I, concerning countervailable subsidies, and Factor VII, regarding raw and processed agriculture products, are inapplicable to the investigations at issue.

[60] Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994). The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(i) requires the Commission to consider "all relevant factors" that might tend to make the existence of a threat of material injury more probable or less probable, including domestic industry support for the petition and the views of other interested parties such as consumers. 44 F.3d at 984. The court stated that the Commission "may use its sound discretion in determining the weight to afford these and all other factors, but . . . cannot ignore them." Id. at 984. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Id.

[61] Cold-Rolled I at 26-27.

[62] As in our earlier determinations, the countries subject to investigation have shown generally declines in subject import volumes in the interim 1999 period, *** rates of capacity utilization, *** levels of domestic consumption of domestically-produced certain cold-rolled steel products, *** inventory levels, a lack of significant outstanding orders and *** planned capacity increases. CR at Tables VII-3, VII-4, VII-7, and VII-9, PR at Tables VII-3, VII-4, VII-7, and VII-9.

expressed in our earlier determinations, we do not find that the domestic industry is threatened with material injury by reason of the subject imports.[63]

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing certain cold-rolled steel is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel from China, Indonesia, Slovakia, and Taiwan that Commerce found to be sold in the United States at less than fair value.

[63] See Cold-Rolled I at 26-27.

DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Certain Cold-Rolled Steel Products from China, Indonesia, Slovakia, and Taiwan
Inv. Nos. 731-TA-831-832, 835, and 837 (Final)

For the reasons set forth below, I determine that the domestic cold-rolled steel industry is materially injured by reason of subject imports from China, Indonesia, Slovakia, and Taiwan. Accordingly, I dissent from the negative determinations rendered by the majority in these investigations.

I. Material Injury:

The instant investigations arise out of a group of simultaneously filed petitions that also included the Commission's recently completed investigations of certain cold-rolled steel products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand,[1] as well as from Turkey and Venezuela.[2] Under section 771(7)(G)(iii) of the Tariff Act of 1930, as amended, the Commission is required to render determinations in the instant investigations based upon the same record as that of the Commission's determinations regarding subject imports from Argentina, Brazil, Japan, Russia, South Africa, Thailand, Turkey, and Venezuela, except that the record in these investigations also includes Commerce's final determinations with regard to China, Indonesia, Slovakia, and Taiwan, as well as the parties' final comments concerning the significance of such determinations.[3] The record in the instant investigations is otherwise identical to that examined by the Commission in determinations regarding imports from Argentina, Brazil, Japan, Russia, South Africa, Thailand, Turkey, and Venezuela; consequently, I adopt the findings and analyses contained in my determinations regarding imports from the foregoing eight countries[4] for purposes of defining the domestic like product and domestic industry, negligibility,

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[1] Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000).

[2] Certain Cold-Rolled Steel Products from Turkey and Venezuela, Inv. Nos. 731-TA-839-840 (Final), USITC Pub. 3297 (May 2000).

[3] 19 U.S.C. § 1677(7)(G)(iii); *see* Certain Hot-Rolled Steel Products from Brazil and Russia, Inv. Nos. 701-TA-384 (Final) and 731-TA-806 and 808 (Final), USITC Pub. 3223 at 3 (August 1999).

[4] Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, *Dissenting Views of Chairman Lynn M. Bragg*, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 at 29-40 (March 2000); Certain Cold-Rolled Steel Products from Turkey and Venezuela, *Dissenting Views of Chairman Lynn M. Bragg*, Inv. Nos. 731-TA-839-840 (Final), USITC Pub. 3297 at 13-14 (May 2000).

cumulation,[5] captive production and other conditions of competition, and material injury, in the instant investigations of subject imports from China, Indonesia, Slovakia, and Taiwan.

Based upon my cumulative analysis of subject imports from the twelve countries for which petitions were filed on the same day, I find that the domestic industry is materially injured by reason of subject imports from China, Indonesia, Slovakia, and Taiwan.

II. Conclusion:

Based upon the foregoing, I determine that the domestic industry producing certain cold-rolled steel is materially injured by reason of subject imports from China, Indonesia, Slovakia, and Taiwan.

[5] I again determine to cumulate subject imports from all twelve countries for which petitions were filed on the same day, notwithstanding the fact that a Commission majority previously rendered negative determinations with regard to Argentina, Brazil, Japan, Russia, South Africa, and Thailand, as well as with regard to Turkey and Venezuela. In my view, the record closing provision of 19 U.S.C. § 1677(7)(G)(iii) precludes the Commission from considering any information that postdates the closing of the record in these investigations on February 25, 2000, except as expressly provided by statute (*i.e.* Commerce's final antidumping determinations and party final comments thereon). I have previously articulated this approach in similar circumstances. *See* Certain Steel Wire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087, at 8 n.31 (March 1998) (cross-cumulation of imports subject to countervailing duty investigations warranted in staggered determinations notwithstanding the fact that the CVD investigations previously had been terminated). Once the prerequisites for cumulation are satisfied (*i.e.* filing of petitions on the same day coupled with a reasonable overlap of competition), I do not believe that the statute dictates disparate analyses simply because certain of the investigations are concluded before others; indeed, to conclude otherwise carries implications for the analysis beyond the question of cumulation. For example, if imports subject to previously terminated investigations are no longer deemed amenable to cumulation in staggered investigations (assuming the prerequisites for cumulation are otherwise satisfied), the Commission may be required in certain circumstances to revisit its findings concerning negligibility. These circumstances were not, however, present in the instant investigations.